



Where ideas connect

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July 18, 2003

Paul Lohaus, Director
Office of State and Tribal Programs
Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Via Federal Express

Dear Mr. Lohaus:

The following is a list of changes to the final application as a result of comments received from the Nuclear Regulatory Commission (NRC) in a letter dated June 27, 2003. The NRC identified comments using the final application submitted in January 2003. As a result of response to the comments, corrections were made to the final application that resulted in a different pagination. In order to facilitate review of the revised final application, changes will be identified in the "clean copy" of the revised application by page number that may differ from the January 2003 version. In addition, an underline/strikeout version has also been provided to facilitate the review. Following reference to the changes by page number on the clean copy, underline/strikeout changes page numbers will follow in brackets.

NRC comment #1: Page 3, Policy Statement, line 13 of full paragraph. The amendment to the agreement does not include authority for the pre-1978 mill tailings and Utah should not imply that this will be included in the new regulatory program. Pre-1978 mill tailings (less than 0.05 weight would be NORM) are not under NRC authority under the AEA, therefore, they cannot be included in an agreement between NRC and Utah.

Response to comment #1: A clarifying paragraph regarding pre-1978 material has been added to page 4 [4] of the revised final application. This paragraph also includes a commitment to follow the alternate feed guidance (Regulatory Issues Summary [RIS] 2000-23) and indicates that alternate feed amendment requests will be considered to be major amendments subject to applicable licensing provisions. RIS 2000-23 is included in Tab 8 of the addendum.

NRC comment #2: Page 11, Staffing, line 6 of full paragraph. In the list of courses, please note that NRC does not offer the Radiation Protection Engineering course any more. Therefore, this course should be deleted or it would appear that Utah would not be able to meet their training commitment in the application.

Response to comment #2: The subject course was deleted from page 12 [12] of the revised final application.

NRC comment #3: Page 12&13, Staffing. The numbers in the table at the top of page 13 do not appear to be correct. The total for the table appears to be 380 days not 480 days. The 15 percent contingency for non-direct work seems reasonable. However, there was no contingency for direct work not included in the two tables. The discussion does not include reactive inspection time as well as construction inspections which will be needed for Rio Algom and Plateau Resources as they decommission and close their facilities. Resources for public questions not related to specific major licensing actions, guidance development/changes, minor amendments, and questions from licensees need to be included. Although we believe the staffing level is appropriate, the justification does not fully support as drafted.

Response to comment #3: On page 11 [11], additional response has been provided regarding the impact of the mentoring process on the normal workload. Pages 13 and 14 [14] of the revised final application have been modified to clarify the number of licensing staff days and the staffing conclusion relating to adequacy. In addition, the contingency factor was increased to 20% to address those "direct work" items identified in the comment.

NRC comment #4: Page 17, first line of first paragraph. This section is worded as though there are actions to be taken and does not acknowledge the rulemaking completed. Page 22 first line of third paragraph has similar wording of actions to be taken when we believe you have completed them.

Response to comment #4 : The appropriate sections were modified on page 17 [18], first sentence under the heading "Reservation of Authority to the United States" to indicate the completion of the items. Wording was modified on page 23 [24] to indicate that a change to R313-24-1 was accepted as a non-substantive rule change effective January 1, 2003. In addition, Table A on page 22 [23] was modified to include R313-15-301 as part of the rulemakings.

NRC comment #5: Page 23, end of first partial paragraph. There should be some discussion of the judicial review that is available after the Utah Radiation Control Board has reviewed the decision of the Executive Secretary.

Response to comment 5: The paragraph was modified on page 24 [25] of the final revised application to indicate the next appeals step (to Utah Court of Appeals) and time frame involved (30 days). The statutory citations were provided.

NRC Comment #6: Page 23, Licensing Program, first paragraph, line 5. This section does not acknowledge the rulemaking that have been completed.

Response to comment #6: The section, "Licensing Program" was modified on page 24 [25] to acknowledge that rulemakings have been completed. A minor grammatical change, not suggested by NRC, was also made to the next sentence by substituting "will" for "would."

NRC comment #7: Page 23, Last paragraph, line 5. The last word in the line should be "unrestricted" not "restricted"

Response to comment #7: This change was accomplished on page 25 [27], last paragraph.

NRC comment #8: Page 26, line 4. The Regulatory Guide number "3.111" should be "3.11.1" to be correct. In addition, the NRC has standard review plans for reclamation plans (NUREG-1620) that should be included in the list of guidance documents.

Response to comment #8: The Regulatory Guide number was corrected on page 27 [28]. NUREG-1620 was added to the list of guidance documents. Regulatory Issues Summary [RIS] 2000-23 relating to alternate feeds was also added to the list of guidance documents. A typographical error - "utake" was corrected to "uptake"

NRC comment #9: Page 29, Rules Equivalent to NRC Regulations, line 1. The reference to "future adoption" does not acknowledge the rulemakings that have been completed. The last paragraph in this section also implies the rulemakings have not been completed. The reference to 50.31(b) on page 31 [32] should be 150.31(b).

Response: All areas relating to "future adoption" on pages 30 and 31[31 and 32] have been corrected to indicate that necessary rules have been adopted. The reference 150.31(b) was corrected on page 32.

NRC comment #10: Page 31, line 4. Editorial nits. Ra-266 should be Ra-226. Th-320 should be Th-230.

Response to comment #10: These editorial nits have been corrected on page 31[33] of the revised final application.

NRC comment #11: Page 34, line 2. The word "it is obtaining" should be changed to "Utah has obtained the".

Response to comment #11: The final application has been revised to reflect the above change on page 34 [36].

NRC comment #12: The Reporting Material Events (STP Procedure SA-300) referenced in Appendix D as Attachment 7 is the 1998 version. Utah needs to use current SA-300 version dated May 23, 2001 and properly reference it.

Response to comment #12:

The final application has been revised to reference the 2001 version of STP Procedure SA-300 and the 1998 version has been replaced with the 2001 version in Appendix D. The replacement procedure is located in Tab 4 of the addendum.

NRC comment #13: Inspection Manual Chapter 2801 referenced in Appendix D is dated 1998. The revised version (2000) should be referenced and used.

Response to comment #13:

The final application has been revised to reference the 2000 version of IMC 2801 and the 1998 version has been replaced with the 2000 version in Appendix D. The replacement version is located in Tab 5 of the addendum.

NRC comment #14: In section G in the side-by-side regulation comparisons, for Criterion 5B(4), Utah states that their groundwater Class III is "roughly equivalent to an 'exempted aquifer' under the EPA Safe Drinking Water Act/Underground Injection Control Regulations found in 40 CFR 146.4".

Staff does not agree with the above statement and believes that Utah's class III groundwater differs from EPA's definition of an "exempted aquifer." This needs further discussion or the statement should be deleted. [The NRC staff reviewer suggests that Utah delete the statement from the Utah table, since all four classes in Utah require continued protection, whereas the EPA exempt aquifer does not require protection. Therefore, none of the Utah classes are similar to the EPA exempt aquifer.]

Response to comment #14: We concur and the statement will be removed from the side-by-side regulation comparisons. A replacement page is provided in Tab 6 of the addendum.

NRC comment #15: The proposed draft Amendment to the Agreement in Appendix K did not address everything necessary for an 11e.(2) agreement. The NRC drafted a revised amendment to the Utah Agreement for your consideration. Please see attached.

Response to comment #15: We concur with the revised agreement and will replace the draft Agreement in Appendix K with the NRC draft Agreement. The replacement draft agreement is located in Tab 7.

Thank you for your assistance in this matter in quickly identifying and resolving issues with the application.

Sincerely,

William J. Sinclair, Executive Secretary
Utah Radiation Control Board